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(Original Signature of Member)

109TH CONGRESS
2D SESSION

H. R. _____

To implement a program of increased water releases from Friant Dam that will address environmental, habitat, fisheries, and water quality concerns on the San Joaquin River.

IN THE HOUSE OF REPRESENTATIVES

Mr. NUNES introduced the following bill; which was referred to the Committee
on _____

A BILL

To implement a program of increased water releases from Friant Dam that will address environmental, habitat, fisheries, and water quality concerns on the San Joaquin River.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “San Joaquin River Improvement Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Purpose.
- Sec. 3. Definitions.
- Sec. 4. Designation of water year types.
- Sec. 5. Release of improvement flows.
- Sec. 6. Termination of settlement agreement.
- Sec. 7. Compliance with applicable law.
- Sec. 8. Satisfaction and discharge of obligations.
- Sec. 9. Recovery of improvement flows.
- Sec. 10. Groundwater impacts.
- Sec. 11. Funding.
- Sec. 12. Private rights of action.
- Sec. 13. Payment of attorneys' fees.
- Sec. 14. Chinook salmon.
- Sec. 15. No impacts on other interests.
- Sec. 16. Priority.

1 **SEC. 2. PURPOSE.**

2 The purpose of this Act is to implement a program
3 of increased water releases from Friant Dam that will ad-
4 dress environmental, habitat, fisheries, and water quality
5 concerns on the San Joaquin River.

6 **SEC. 3. DEFINITIONS.**

7 For the purposes of this Act:

8 (1) IMPROVEMENT FLOWS.—The term “Im-
9 provement Flows” means—

10 (A) for Water Years designated as Critical

11 Low pursuant to section 4, no water;

12 (B) for Water Years designated as Critical

13 pursuant to section 4 other than those des-

14 ignated as Critical Low, 70,795 acre feet;

15 (C) for Water Years designated as Dry

16 pursuant to section 4, 184,021 acre feet; and

1 (D) for Water Years designated Normal-
2 Dry, Normal-Wet or Wet pursuant to section 4,
3 247,876 acre feet.

4 (2) LITIGATION.—The term “Litigation” means
5 the litigation captioned National Resources Defense
6 Council, et al. v. Kirk Rodgers, et al., Eastern Dis-
7 trict of California, No. Civ. S–88-1658 LKK/GGH.

8 (3) SECRETARY.—The term “Secretary” means
9 the Secretary of the Interior.

10 (4) WATER YEAR.—The term “Water Year”
11 means October 1 through the following September
12 30.

13 **SEC. 4. DESIGNATION OF WATER YEAR TYPES.**

14 For purposes of this Act, each Water Year shall be
15 classified by the total annual unimpaired run-off at Friant
16 Dam for that Water Year. The wettest 20 percent of
17 Water Years shall be classified as Wet, the next 30 percent
18 of the Water Years shall be classified as Normal-Wet, the
19 next 30 percent of the Water Years shall be classified as
20 Normal-Dry, the next 15 percent of the Water Years shall
21 be classified as Dry, and the remaining 5 percent of the
22 Water Years shall be classified as Critical. A Critical
23 Water Year in which the total unimpaired run-off at
24 Friant Dam is less than 400,000 acre feet shall be des-
25 ignated as Critical Low. The years 1922 through 2004

1 shall be used to establish Water Year types for purposes
2 of this Act.

3 **SEC. 5. RELEASE OF IMPROVEMENT FLOWS.**

4 In each Water Year, commencing in the Water Year
5 starting on October 1, 2007, the Secretary—

6 (1) shall modify Friant Dam operations so as
7 to release the Improvement Flows for that Water
8 Year;

9 (2) shall ensure that the release of Improve-
10 ment Flows are maintained at the levels prescribed
11 by this Act unless increased by Federal law;

12 (3) shall release the Improvement Flows in a
13 manner that improves the fishery in the San Joa-
14 quin River below Friant Dam but upstream of Grav-
15 elly Ford in existence as of the date of enactment
16 of this Act, and the associated riparian habitat,
17 while also improving water quality in the San Joa-
18 quin River at Vernalis and achieving such other en-
19 vironmental benefits as the Secretary may reason-
20 ably determine; and

21 (4) may, without limiting the actions required
22 under paragraphs (1) through (3) and subject to
23 section 14, use the Improvement Flows to enhance
24 or restore runs of Chinook salmon if the Secretary

1 determines that it is reasonable, prudent, and fea-
2 sible to do so.

3 **SEC. 6. TERMINATION OF SETTLEMENT AGREEMENT.**

4 The Attorney General shall exercise, on behalf of the
5 United States, the right to void the Stipulation of Settle-
6 ment in the Litigation entered by the District Court on
7 October 23, 2006, pursuant to section 8 of the such Stipu-
8 lation of Settlement.

9 **SEC. 7. COMPLIANCE WITH APPLICABLE LAW.**

10 In carrying out this Act, the Secretary shall comply
11 with all applicable Federal and State laws, rules, and reg-
12 ulations, including the National Environmental Policy Act
13 of 1969, the Endangered Species Act of 1973, and Cali-
14 fornia water law. The Secretary and the Secretary of Com-
15 merce shall initiate and expeditiously complete applicable
16 environmental reviews and consultations as may be nec-
17 essary to effectuate this Act. Nothing in this Act shall
18 modify any existing obligation of the United States under
19 Federal Reclamation law to operate the Central Valley
20 Project in conformity with State law and existing or to
21 be renewed water service, repayment, purchase, or ex-
22 change contracts.

1 **SEC. 8. SATISFACTION AND DISCHARGE OF OBLIGATIONS.**

2 Congress hereby finds and declares that the imple-
3 mentation of this Act satisfies and discharges all of the
4 following obligations:

5 (1) Those of the Secretary contained in section
6 3406(c)(1) of title 36 of Public Law 102–757, ex-
7 cept that the Secretary shall continue to assess and
8 collect the charges provided in section 3406(c)(1) of
9 Public.

10 (2) Those of the Secretary and all other parties
11 to protect and keep in good condition any fish that
12 may be planted or exist below Friant Dam, including
13 without limitation any obligations under section
14 5937 of the California Fish and Game Code.

15 **SEC. 9. RECOVERY OF IMPROVEMENT FLOWS.**

16 Not later than 3 years after the date of the enact-
17 ment of this Act, the Secretary shall develop and imple-
18 ment a least-cost plan to fully recover or replace all Im-
19 provement Flows and provide such recovered or replace-
20 ment flows to those water service contractors within the
21 Friant Division, Hidden Unit, and Buchanan Unit of the
22 Central Valley Project that relinquished the Improvement
23 Flows so recovered or replaced.

24 **SEC. 10. GROUNDWATER IMPACTS.**

25 Not later than 3 years after the date of the enact-
26 ment of this Act, the Secretary, in cooperation with rep-

1 representatives of affected landowners, shall develop and im-
2 plement a least-cost plan to fully mitigate the impact on
3 groundwater resources within the service area of the
4 Friant Division, Hidden Unit, and Buchanan Unit of the
5 Central Valley Project caused by the release of Improve-
6 ment Flows. Mitigation may include, but shall not be lim-
7 ited to, development of new water supplies, land retire-
8 ment, and groundwater banking projects. To extent Im-
9 provement Flows are recovered or replaced pursuant to
10 section 9 in a manner that mitigates impacts on ground-
11 water resources caused by the release of Improvement
12 Flows, such recovery or replacement may be considered
13 to be a part of the plan to be implemented under this sec-
14 tion.

15 **SEC. 11. FUNDING.**

16 There are authorized to be appropriated
17 \$_____million (October 2006 price levels) to implement
18 sections 9 and 10, to be available until expended, to be
19 derived first from payment under section 3406(c)(1) of
20 Public Law 102-575, and then from the capital component
21 (not otherwise needed to cover operation and maintenance
22 costs) of payments made by Friant Division, Hidden Unit,
23 and Buchanan Unit long-term water service contractors
24 pursuant to long-term water service contracts beginning
25 in the first fiscal year beginning after the date of the en-

1 actment of this Act (with the capital repayment obligation
2 of such contractors under such contracts to be reduced
3 by the amount paid pursuant to this section 11 and the
4 appropriate share of the existing federal investment in the
5 Project to be recovered by the Secretary pursuant to Pub-
6 lic Law 99-546 to be reduced by an equivalent amount).

7 **SEC. 12. PRIVATE RIGHTS OF ACTION.**

8 Nothing in this Act shall confer upon any person or
9 entity a private right of action or claim for relief to inter-
10 pret or enforce the provisions of this title. Provided, that
11 any Central Valley Project long-term water service con-
12 tractor or landowner within the Friant Division, Hidden
13 Unit or Buchanan Unit adversely affected by the Sec-
14 retary's failure to comply with sections 9 or 10 by bring
15 action against the Secretary for injunctive relief and/or for
16 damages. Any action for damages shall be brought in the
17 Court of Claims.

18 **SEC. 13. PAYMENT OF ATTORNEYS' FEES.**

19 The Attorney General shall pay, from the Judgment
20 Fund, the reasonable attorneys' fees incurred by the plain-
21 tiffs in the Litigation after March 31, 2003, as determined
22 by the court hearing the Litigation.

23 **SEC. 14. CHINOOK SALMON.**

24 (a) RUN PERMITS.—Notwithstanding section 5, no
25 permit may be issued by the Secretary authorizing the re-

1 introduction of any run of Chinook salmon into the San
2 Joaquin River basin until the Secretary of Commerce has
3 promulgated regulations pursuant to section 10(j) of the
4 Endangered Species Act of 1973 (16 U.S.C. 1539(j)) that
5 specify—

6 (1) such Chinook salmon shall be designated a
7 nonessential experimental population;

8 (2) any take of such Chinook salmon shall be—

9 (A) defined as a take that is accidental or
10 incidental to an otherwise legal activity, such
11 as—

12 (i) recreation (such as fishing, boat-
13 ing, wading, trapping, or swimming);

14 (ii) forestry;

15 (iii) agriculture;

16 (iv) operation of dams and reservoirs
17 for irrigation, hydroelectric power, munic-
18 ipal and industrial water supply, and other
19 uses; and

20 (v) other activities that are in accord-
21 ance with Federal, State, and local laws
22 and regulations; and

23 (B) deemed a permitted take;

24 (3) the reintroduction of such nonessential ex-
25 perimental population into the San Joaquin River

1 watershed, including its tributaries, is a reintroduc-
2 tion within the historic range of the species; and

3 (4) all Chinook salmon found within the San
4 Joaquin River watershed, including its tributaries,
5 shall be considered nonessential experimental ani-
6 mals.

7 (b) NO ADDITIONAL TERMS OR CONDITIONS.—Nei-
8 ther the Federal Energy Regulatory Commission nor any
9 Federal or State agency having mandatory conditioning
10 authority under sections 4(e) or 18 of the Federal Power
11 Act or section 401 of the Federal Water Pollution Control
12 Act, shall impose any additional terms or conditions on
13 a hydroelectric project licensed by the Federal Energy
14 Regulatory Commission and located within the San Joa-
15 quin River watershed or its tributaries, as a result of the
16 establishment of a nonessential experimental population of
17 Chinook salmon in the San Joaquin River and its tribu-
18 taries.

19 **SEC. 15. NO IMPACTS ON OTHER INTERESTS.**

20 No Central Valley Project water other than San Joa-
21 quin River water impounded by Friant Dam shall be used
22 to implement section 5. No cost associated with the imple-
23 mentation of this Act shall be imposed directly or indi-
24 rectly on any Central Valley Project contractor, or any
25 other person or entity, outside the Friant Division, the

1 Hidden Unit, or the Buchanan Unit unless such costs are
2 incurred on a voluntary basis.

3 **SEC. 16. PRIORITY.**

4 (a) IN GENERAL.—All actions taken under this Act
5 shall be subordinate to the Secretary’s use of Central Val-
6 ley Project facilities to make Project water, other than
7 water released from Friant Dam pursuant to this Act, and
8 the Secretary’s performance of the Agreement.

9 (b) AGREEMENT.—For the purposes of this section,
10 the term “Agreement” means the Agreement of November
11 24, 1986, between the United States and the Department
12 of Water Resources of the State of California for the co-
13 ordinated operation of the Central Valley Project and the
14 State Water Project as authorized by section 103 of Public
15 Law 909–546, including any agreement to resolve conflicts
16 arising from that Agreement.